

REVENUE DEPARTMENT[701]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code chapter 17A and sections 421.17, 437A.25, 476C.7, and 476D.4, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 70, "Replacement Tax and Statewide Property Tax," and Chapter 80, "Property Tax Credits and Exemptions," Iowa Administrative Code.

Item 1 amends subrule 70.12(1) to provide wind energy tax credits that may be applied against the replacement tax due for electric companies. Item 1 also amends subrule 70.12(2) to extend by one year the period of time for electric companies to claim a reimbursement of replacement tax paid for using soy-based transformer fluid in their operation.

Item 2 amends rule 701—80.5(427) to provide property tax exemptions on buildings and land used for speculative shell building purposes.

Item 3 amends rule 701—80.26(427) to provide property tax exemptions for web search portal businesses.

Item 4 amends 701—Chapter 80 by adding a new rule that requires privately owned libraries and art galleries to file a claim for property tax exemption.

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of these amendments would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any. The Department has determined that these proposed amendments may have an impact on small business.

The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than November 10, 2008, to the Policy Section, Taxpayer Service and Policy Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before October 28, 2008. Such written comments should be directed to the Policy Section, Taxpayer Service and Policy Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Taxpayer Service and Policy Division, Department of Revenue, at (515)281-8036 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by October 29, 2008.

These amendments are intended to implement Iowa Code Supplement section 427.1 as amended by 2008 Iowa Acts, House File 2233, section 2; Supplement section 427.1(7) as amended by 2008 Iowa Acts, Senate File 2400; Supplement section 427.1(27) as amended by 2008 Iowa Acts, Senate File 2419; Supplement section 427.1(35); section 437A.17B as amended by 2008 Iowa Acts, Senate File 2405; section 437A.17C as amended by 2008 Iowa Acts, Senate File 572; chapter 476B as amended by 2008 Iowa Acts, Senate File 2405; and chapter 476D as amended by 2008 Iowa Acts, Senate File 572.

The following amendments are proposed.

ITEM 1. Amend subrules 70.12(1) and 70.12(2) as follows:

70.12(1) A person in possession of a renewable energy tax credit certificate issued pursuant to Iowa Code Supplement sections 476C.1 to 476C.7 chapter 476C or a wind energy tax credit issued pursuant to chapter 476B as amended by 2008 Iowa Acts, Senate File 2405, may apply to the director for a reimbursement of the amount of taxes imposed and paid by the person pursuant to Iowa Code chapter 437A in an amount not more than the person received in renewable energy tax credit certificates pursuant to Iowa Code Supplement sections 476C.1 to 476C.7 or wind energy tax credit certificates. To obtain the reimbursement, the person shall attach to the return required under Iowa Code section 437A.8 the renewable energy tax credit certificates issued to the person pursuant Iowa Code Supplement sections 476C.1 to 476C.7 or the wind energy tax credit certificates and provide any other information the director may require. The director shall direct that a warrant be issued to the person for an amount equal to the tax imposed and paid by the person. Any credit in excess of the person's tax liability may be claimed as a refund for the following seven years. Pursuant to Iowa Code section 437A.14, a taxpayer may file a claim for refund with the director within three years after the replacement tax became due. If the renewable energy or wind energy tax credit claim exceeds the replacement tax due in a year, the taxpayer has seven years to carry over the excess credit. Pursuant to Iowa Code section 476C.4(6), a person may not receive both a renewable energy tax credit and a wind energy tax credit. The reimbursement applies to a qualified facility placed in service on or after July 1, 2005, but before July 1, 2012. The utilities board shall notify the department of revenue of the amount of kilowatt hours of electricity purchased from a renewable energy facility or the amount of kilowatt hours generated and purchased from a qualified wind energy facility or generated and used on site by the qualified wind energy facility. The department of revenue shall calculate the amount of the tax credit and issue the tax credit certificate. Wind energy and renewable energy tax credit certificates may be transferred, and a replacement tax credit certificate may reflect a different type of tax than the type of tax noted on the original tax credit certificate.

70.12(2) A person in possession of a soy-based transformer fluid tax credit certificate issued pursuant to 2006 Iowa Acts, Senate File 2402, section 7, Iowa Code chapter 476D may apply to the director for a reimbursement of the amount of taxes imposed and paid by the person pursuant to Iowa Code chapter 437A in an amount not more than the person received in soy-based transformer fluid tax credit certificates issued pursuant to 2006 Iowa Acts, Senate File 2402, section 7. To obtain the reimbursement, the person shall attach to the return required under section 437A.8 the soy-based transformer fluid tax credit certificates issued to the person pursuant to 2006 Iowa Acts, Senate File 2402, section 7, and provide any other information the director may require. The director shall direct a warrant to be issued to the person for an amount equal to the tax imposed and paid by the person pursuant to Iowa Code chapter 437A but for not more than the amount of the soy-based transformer fluid tax credit certificates attached to the return. This subrule is rescinded December 31, 2008 2009.

ITEM 2. Amend rule 701—70.12(437A), implementation sentence, as follows:

This rule is intended to implement Iowa Code Supplement section 437A.17B and 2006 Iowa Acts, Senate File 2402, section 4, chapter 476B as amended by 2008 Iowa Acts, Senate File 2405, Iowa Code section 437A.17C and chapter 476D as amended by 2008 Iowa Acts, Senate File 572, and chapter 476C.

ITEM 3. Amend rule 701—80.5(427) as follows:

701—80.5(427) Speculative shell buildings.

80.5(1) *Authority of city council and board of supervisors.* A city council or county board of supervisors may enact an ordinance granting property tax exemptions for value added as a result of new construction, reconstruction or renovation of speculative shell buildings or additions to existing buildings or structures, or may exempt the value of an existing building or structure being reconstructed or renovated and the value of the land on which the building or structure is located, if the reconstruction or renovation constitutes complete replacement or refitting of an existing building or structure owned by community development organizations, not-for-profit cooperative associations under Iowa Code chapter 499A, or for-profit entities. See Iowa Code Supplement section 427.1(27) as amended by 2008

Iowa Acts, Senate File 2419, for definitions. The value added exemption for new construction includes reconstruction and renovation constituting complete replacement or refitting of existing buildings and structures if the reconstruction or renovation is required due to economic obsolescence, or to implement industry standards in order to competitively manufacture or process products, or to market a building or structure as a speculative shell building. The exemption for reconstruction or renovation not constituting new construction does not have to meet these requirements but has to meet only the requirements set forth in the definition of a speculative shell building. The percentage of exemption and period of time over which the exemption may be allowed are established by the council or board in the ordinance authorizing the exemption, and the same exemption applies to all qualifying property within that jurisdiction shall specify if the exemption will be allowed to community development organizations, not-for-profit cooperative associations under Iowa Code chapter 499B, or for-profit entities, and the length of time the exemption is to be allowed.

80.5(2) Eligibility for exemption. The value added by new construction, reconstruction, or renovation and first assessed prior to January 1 of the calendar year in which an ordinance authorizing a tax exemption becomes effective is not eligible for exemption. However, the value added as of January 1 of the calendar year in which the ordinance becomes effective is eligible for exemption if the ordinance is in effect on February 1 of that calendar year. This subrule does not apply to new construction projects having received prior approval. For reconstruction and renovation projects not constituting new construction, the ordinance authorizing the exemption must be in effect by February 1 of the year the project commences for the exemption to be allowable in the subsequent assessment year.

80.5(3) Application for exemption.

a. A community development organization, not-for-profit cooperative association, or for-profit entity must file an application for exemption with the assessor between January 1 and February 1, inclusive, of the year in which the value added for new construction is first assessed for the exemption to be allowable for that assessment year. For reconstruction and renovation projects not constituting new construction, an application for exemption must be filed by February 1 of the assessment year in which the project commences for the exemption to be allowable the following assessment year. If approved, no application for exemption is required to be filed in subsequent years for ~~that the~~ value added exemption or the reconstruction or renovation exemption not constituting new construction. An application cannot be filed if a valid ordinance has not been enacted. If an application is not filed by February 1 of the year in which the value added for new construction is first assessed, the organization, association, or entity cannot receive, in subsequent years, the exemption for that value added. However, if the organization, association, or entity has received prior approval, the application must be filed by February 1 of the year in which the total value added for the new construction is first assessed.

b. ~~In the event that~~ If February 1 falls on either a Saturday or Sunday, applications for the exemption may be filed the following Monday.

c. Applications submitted by mail must be accepted if postmarked on or before February 1, ~~or, in the event that~~ if February 1 falls on either a Saturday or Sunday, a postmark date of the following Monday is acceptable.

80.5(4) Prior approval. To obtain prior approval for a project, the proposal of the organization, association, or entity must be approved by a specific ordinance addressing the proposal and passed by the city council or board of supervisors. The original ordinance providing for the exemption does not constitute the granting of prior approval for a project. If an organization, association, or entity has obtained a prior approval ordinance from a city council or board of supervisors, the exemption for new construction cannot be obtained until the year in which all value added for the completed project is first assessed. Reconstruction and renovation projects constituting new construction must receive prior approval to qualify for exemption. Reconstruction and renovation projects that do not constitute new construction need not receive prior approval.

80.5(5) Termination of exemption. The exemption continues until the property is leased or sold, the time period for the exemption specified in the ordinance elapses, or the exemption is terminated by ordinance of the city council or board of supervisors. If the ordinance authorizing the exemption is repealed, all existing exemptions continue until their expiration and any projects having received prior

approval for exemption for new construction are to be granted an exemption upon completion of the project. If the shell building or any portion of the shell building is leased or sold, the exemption for new construction shall not be allowed on that portion of the shell building leased or sold in subsequent years. If the shell building or any portion of the shell building is leased or sold, the exemption for reconstruction or renovation not constituting new construction shall not be allowed on that portion of the shell building leased or sold and a proportionate share of the land on which the shell building is located in subsequent years.

This rule is intended to implement Iowa Code Supplement section 427.1(27) as amended by 2008 Iowa Acts, Senate File 2419.

ITEM 4. Amend rule 701—80.26(427) as follows:

701—80.26(427) Web search portal property. This exemption includes cooling systems, cooling towers, and other temperature control infrastructure; all power infrastructure for transformation, distribution, or management of electricity used for the maintenance and operation of the web search portal, including but not limited to exterior dedicated business-owned substations; back-up power generation systems, battery systems, and related infrastructure; and racking systems, cabling, and trays, which are necessary for the maintenance and operation of the web search portal. The exemption does not apply to land, buildings, and improvements or power distribution systems subject to assessment under Iowa Code chapter 437A. The web search portal business must meet the requirements contained in Iowa Code section 423.3, subsection 92 or subsection 93, for the exemption to be allowable. The owner of the property must file a claim for exemption with the assessor by February 1 of the first year the exemption is claimed. Claims for exemption in successive years shall be required only for property additions.

This rule is intended to implement Iowa Code Supplement section ~~427.1~~ 427.1(35) and ~~as amended by 2007~~ 2008 Iowa Acts, House File 912, section 3 2233, section 2.

ITEM 5. Adopt the following new rule 701—80.27(427):

701—80.27(427) Privately owned libraries and art galleries. Claims for exemption for libraries and art galleries owned and kept by private individuals, associations, or corporations for public use and not for private profit must be filed with the local assessor by February 1 of the first year the exemption is requested. Once the exemption is granted, the exemption shall continue to be granted for subsequent assessment years without further filing of claims as long as the property continues to be used as a library or art gallery for public use and not for private profit.

This rule is intended to implement Iowa Code Supplement section 427.1(7) as amended by 2008 Iowa Acts, Senate File 2400.